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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

FILE: [redacted] Office: Miami Date: NOV 1 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of the Dominican Republic who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides, in pertinent part:

> [T]he status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

The district director determined that the applicant was not eligible for adjustment of status as the spouse of a native or citizen of Cuba pursuant to section 1 of the Act of November 2, 1966, because she had not established that her marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States. He further determined that the applicant's spouse had not adjusted to that of a lawful permanent resident of the United States pursuant to section 1 of the Cuban Adjustment Act. The district director, therefore, denied the application on March 1, 2000.

In response to the notice of certification, counsel asserts that they strongly disagree with the district director's conclusion that the petitioner and her spouse have entered into a marriage for the primary purpose of circumventing the immigration laws of the United States. He contends that as clearly demonstrated by the responses given by the couple at the interview, their perception and understanding of what was being asked by the interviewer was not congruent with the meaning of what was being asked; hence, the answers to the questions were misconstrued as not being correct. He states that the level of education of the couple, their memory, and language dialect are all relevant to their understanding of the questions. Counsel submits additional evidence and states that the couple submitted 12 additional receipts and bills bearing their names and/or address [redacted] Miami, Florida) which is

the couple's current address, but were not noted by the interviewer.

The record reflects that on June 11, 1998 at Miami, Florida, the applicant married a native and citizen of Cuba. While the district director determined that the applicant's spouse had not adjusted to that of a lawful permanent resident under section 1, the record reflects that on September 27, 1995, the applicant's spouse filed for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act. On May 3, 2000, the status of her Cuban spouse was subsequently adjusted to permanent residence under section 1. Therefore, this finding of the district director will be withdrawn.

The district director further determined that the applicant had not established that her marriage to her Cuban spouse was not entered into for the primary purpose of circumventing the immigration laws of the United States.

At an interview regarding her application for permanent residence on February 29, 2000, the applicant and her spouse were each placed under oath and questioned separately regarding their domestic life and shared experiences. Citing Matter of Laureano, 19 I&N Dec. 1 (BIA 1983), and Matter of Phillis, 15 I&N Dec. 385 (BIA 1975), the district director determined that the discrepancies encountered at the interview, a number of which relate to the inception of the marriage, and the lack of material evidence presented, strongly suggest that the applicant and her spouse have entered into a marriage for the primary purpose of circumventing the immigration laws of the United States.

In response to the notice of certification, counsel explains the discrepancies in the applicant's and her spouse's answers to questions posed at their interview. He submits additional evidence and claims that the couple submitted 12 additional receipts and bills bearing their names and/or address [redacted] Miami, Florida) which is the couple's current address, but were not noted by the interviewer. The record of proceeding contains the following documents:

1. Lease agreement for an apartment at [redacted] dated August 1, 1999 between the applicant and her spouse and [redacted] and [redacted]

2. AT&T telephone bill dated August 27, 1999 addressed to [redacted] at [redacted] Street.

3. AT&T telephone bill dated January 27, 2000 addressed to [redacted] at [redacted] Street.

4. Bell South telephone bill dated February 17, 2000 addressed to the applicant at [redacted]

5. The applicant and her spouse's 1998 joint income tax filed on February 15, 2000, reflecting the address [redacted]

6. A letter from [redacted] dated February 22, 2000, indicating they have a joint account with the bank since July 31, 1998, and shows their address as [redacted]

7. The spouse's 1998 Forms W-2 and Forms 1099 show two addresses: [redacted] and [redacted]

The record reflects that the applicant married her Cuban spouse on June 11, 1998 at Miami, Florida. However, insufficient evidence was furnished to establish joint residence subsequent to the marriage. The only documents furnished reflecting joint residence of the applicant and her spouse are the 1998 joint income tax and the [redacted] letter. While the lease agreement for an apartment at [redacted] was entered on August 1, 1999, no documentation was furnished to show that the applicant's spouse is residing at this address. Rather, it appears that the applicant shares this apartment with [redacted].

Further, the applicant and her spouse's Forms G-325 (Biographic Information) dated December 21, 1998, both show that they resided at [redacted] since January 1998, prior to their marriage, and to the date the application for adjustment of status was filed on December 22, 1998. However, no documentation was furnished to establish that either or both resided at this address. Nor is there evidence that the applicant resided with her spouse at the addresses listed in paragraph 7 above.

Furthermore, it should be noted that the questions posed on the petitioner and his spouse at their interview are all crucial in establishing that there is a bona fide marital relationship. Specifically noted are conflicting answers to significant questions raised by the district director:

1. You and your spouse were each asked when you began living together. You stated that you began living together after the marriage. Your spouse stated that you began living together before the marriage.

Counsel, in response to the notice of certification, states: "The beneficiary was correct in her answer regarding their living arrangements since the interviewer's used the word 'living together' which is ambiguous, since a Dominican could interpret this question to mean 'Living as man and wife' which is the interpretation understood by [redacted] (the applicant). [redacted] (the applicant's spouse) understood the word 'living

[redacted]

together' to mean where the couple resided together. The confusion stems from the fact that the couple had consummated their sexual relationship before the marriage, however, they did not begin living under the same roof until after the marriage."

6. You and your spouse were each asked where you slept the night before your marriage. You stated that you slept at your boss' house located in Key Biscayne. You stated that your spouse picked you up on the morning that you were to be married. Your spouse stated that you both slept together at his parents' house and, on the next morning, you both drove together to the courthouse.

Counsel, in response, states: [redacted] recollection regarding where the couple stayed the night before the wedding is correct. She remained at her bosses home the night before the wedding and she stated that her husband picked her up and that her boss and wife came along in a separate vehicle. The husband's recollections where [sic] not correct due to the long period of time that had transpired since the couple where [sic] married."

7. You and your spouse were each asked what you did after the marriage took place. You stated that you went to your spouse's parent's house and that you ate pizza. You stated that your spouse then drove you back to your boss's house in Key Biscayne and that he picked you up the day after the wedding. Your spouse stated that you went to his parent's house and that neither of you left the house that night.

Counsel, in response, states: "Once again [redacted] recollection regarding what the couple did the day after the marriage where [sic] correct, in that she spent the day with her husband and that he drove her to her boss's home to spend the night. They did not spend the night together and that he drove back to his mother's home to spend the night. Mr. Garcia's recollection where [sic] not correct."

Counsel's response to question 1 above, however, contradicts the evidence contained in the record of proceeding, including the Form G-325 signed by the applicant and her spouse on December 21, 1998, reflecting that they were residing together since January 1998. If the information listed in the Form G-325 were in fact true, it is not clear why the applicant and her spouse resided apart prior to and subsequent to the marriage. Furthermore, it is reasonable to assume that celebrating the first day and night of their marriage would be considered a very important occasion for the couple and would remember such details as how and where they spent this occasion. Nor is it unreasonable to assume that the couple would remember where they slept the night before the marriage and how they arrived at the courthouse the day of the marriage.

[redacted]

While counsel claims that the couple's perception and understanding of what was being asked by the interviewer was not congruent with the meaning of what was being asked because of their level of education, there is no evidence in the record to establish that there was a misunderstanding of the questions posed by the Service officer to the applicant and her spouse. Furthermore, while counsel rebuts each of the discrepancies addressed by the district director in his decision, the record is devoid of sworn statements from the applicant and her spouse that the rebuttal posed by counsel are in fact true. Statements by counsel are not evidence. Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

The inconsistencies of the evidence furnished render counsel's explanations regarding the conflicting answers given at the time of interview to be less than credible. The applicant has failed to overcome the district director's finding that she had not established that her marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States.

The applicant is neither a native nor a citizen of Cuba, nor has she submitted sufficient evidence to support her claim that she is residing with her Cuban citizen spouse in the United States and that there is a bona fide marital relationship. She is, therefore, ineligible for adjustment of status pursuant to section 1 of the Act. See Matter of Bellido, 12 I&N Dec. 369 (Reg. Comm. 1967).

Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that she is eligible for adjustment of status. Further, Matter of Marques, 16 I&N Dec. 314 (BIA 1977), held that when an alien seeks favorable exercise of the discretion of the Attorney General, it is incumbent upon her to supply the information that is within her knowledge, relevant, and material to a determination as to whether she merits adjustment. When an applicant fails to sustain the burden of establishing she is entitled to the privilege of adjustment of status, her application is properly denied.

The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.